

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

vs

3:CR-19-09

BRUCE EVANS, SR. & BRUCE :  
EVANS, JR. :

BEFORE: THE HONORABLE MALACHY E. MANNION  
UNITED STATES DISTRICT COURT JUDGE

PLACE: COURTROOM NO. 3

PROCEEDINGS: FINAL PRETRIAL CONFERENCE

DATE: TUESDAY, SEPTEMBER 28, 2021

APPEARANCES:

For the United States:

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For Defendant Bruce Evans, Jr.:

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1 THE COURT: Are your clients here today?

2 MR. CASEY: Judge, I did speak with my client, and I  
3 didn't -- I didn't bring him with me today.

4 THE COURT: Normally in a criminal case the  
5 defendants are physically present. I can't remember having a  
6 final pretrial conference without having the defendants  
7 physically present for it. Is there some written waiver? This  
8 is an important aspect of their criminal prosecution. Do we  
9 have a waiver of their right to be here?

10 MR. CASEY: I don't. I don't, Judge. That's my  
11 error.

12 THE COURT: Off the record for a second.

13 (A discussion was held off the record.)

14 THE COURT: Back on the record. So then it's the  
15 United States of America against Bruce Evans, Sr., and Bruce  
16 Evans, Jr. The criminal number in the case is 3:CR-19-9.  
17 We're here for a final pretrial conference. Now, Mr. Casey,  
18 you are here representing Mr. Bruce Evans, Sr.; is that  
19 correct?

20 MR. CASEY: Yes, Your Honor. I regret not having him  
21 here, but I will confer with him and prepare an affidavit or  
22 declaration so that the Court is assured that all what  
23 transpires here is reviewed with him.

24 THE COURT: Mr. Brown, you represent Mr. Bruce Evans,  
25 Jr.?

1 MR. BROWN: I do, Your Honor, and we will do the same  
2 thing.

3 THE COURT: Okay. First of all, I do appreciate that  
4 counsel have filed a status report. Mr. Brown, you filed a  
5 document indicating his not being here was on his own volition  
6 with the consent of counsel.

7 MR. BROWN: That is correct, Your Honor.

8 THE COURT: I do appreciate the filing of the joint  
9 status report. We wanted to kind of clear up a lot of things  
10 that don't need to be truly addressed as we go through it. The  
11 first of those in the joint status report is we will move the  
12 trial to November 15th as requested by the parties in the case  
13 and so we will do that by an order. In reviewing it, it  
14 appears that you're really in general agreement as to  
15 everything except the issue of Brady and Giglio material. Is  
16 that correct?

17 MS. OLSHEFSKI: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. CASEY: Yes, it is, Judge.

20 THE COURT: I know there's a formal motion on that.  
21 I think it's document 38 or -- and the briefing has been  
22 handled on that document 39, and the government's response was  
23 document 50 something. I did note that in the defendant's  
24 request for the material, you seem to have itemized a number of  
25 things that you believe somehow fit into that category. In the

1 government's response it appeared to be more general as to  
2 whether Giglio or Brady material needs to be given a prior to  
3 Jencks time, but I didn't see really a direct response to some  
4 of the particular allegations or requests that were being made.  
5 So I wanted to kind of just address some of those.

6           It appears to me -- and we will do a written ruling.  
7 It appears to me for the most part, Mr. Casey, that most of the  
8 material that's listed in there is material that assuming that  
9 there is some Brady or Giglio content to it or potential -- the  
10 reason I say that is some of your arguments include the fact  
11 that you believe there might be inconsistent statements in some  
12 of the statements of other individuals.

13           You know, an inconsistent statement is often in the  
14 eye of the beholder of the statement. As we tell the jury  
15 during the closing by counsel that they'll hear one counsel and  
16 say there's a reasonable inference to be drawn in this  
17 direction and the other counsel will say the other direction.  
18 That to me is not Brady or Giglio material.

19           And so with respect to that, most of what I read  
20 clearly in my mind assuming the government is aware of its  
21 Brady and Giglio obligations -- and there's no doubt that Ms.  
22 Olshefski is aware of those obligations. I'm assuming that if  
23 there's exculpatory information or information that was in  
24 there that would be favorable to the defense that was not  
25 co-extensive with Jencks material that they would provide that.

1 An example would be -- I would note that it appears that you  
2 also have access, at least some access, to almost all of the  
3 individuals who you have named in there that you were concerned  
4 about them potentially having provided the government with  
5 Brady or Giglio material.

6 For example, I believe that you said Mr. -- what was  
7 his name, Mr. Randt, there was an allegation that when he was  
8 first approached by the government in general and asked if  
9 anyone had done anything wrong, his answer was no, and so you  
10 were requesting that information as Brady or Giglio material to  
11 the extent that it was included in the statement by the  
12 government agent at the time.

13 First of all, you know, the purpose of Brady material  
14 is to make sure that the defense is aware of any information  
15 that's, in fact, exculpatory. It appears by those statements  
16 you are aware that -- at least in good faith made an allegation  
17 that he has made that statement and have access to the  
18 individual to the extent that he may or may not wish to speak  
19 with you, which is, of course, his determination along with his  
20 counsel if he has counsel, but I don't know that I consider  
21 that kind of response necessarily to be Brady or Giglio  
22 depending on what the substance of the remainder of the  
23 statement is and whether or not it was recanted at a later  
24 time.

25 There's no question you're entitled to that. The

1 real question becomes is there some surprise that would evolve  
2 to you if you did not get that information prior to the Jencks  
3 material turnover time. Technically under 3500, of course,  
4 that doesn't have to get turned over until after the witness  
5 has testified. As a practical matter, we all know that the  
6 government turns that information over at some point before  
7 trial, normally the weekend before or something of that nature.

8           So as I read through, you know, most of those notes,  
9 which seem to -- or most of those requests which seem to  
10 indicate a request for information that for the most part seems  
11 co-extensive to me with Jencks material that you would receive  
12 that material at Jencks time, secondly, that the government may  
13 rightfully have the determination that what you believe may be  
14 Brady material they don't believe is, in fact, Brady material.

15           Having said that, of course, it is their obligation  
16 to turn over any Brady material that is there, and I assume Ms.  
17 Olshefski takes that seriously. So if we get to trial and  
18 there was, in fact, Brady material that was not co-extensive  
19 with Jencks material that was not turned over in advance but  
20 was requested in advance, we can cover that issue at that  
21 particular time. But in the interim, I would like, Ms.  
22 Olshefski, you to respond to the individual Brady requests that  
23 were made in there.

24           There are -- looks like there are nine or ten of  
25 those that were made concerning statements and just your

1 position as to why each one of those are either not Brady  
2 material or to the extent that they could be considered Brady  
3 material that they are co-extensive with Jencks material that  
4 you intend to turn over at the time of trial. You know, the  
5 Courts are pretty much clear on that judges should not be doing  
6 in camera review of material to decide whether they -- the  
7 judge thinks it's Brady or not Brady. That's really the  
8 application of the government.

9           As I said, if it turns out that you've become aware  
10 that there was clearly Brady material it was not turned over in  
11 time such that it prejudiced you in some way, we can argue that  
12 at that particular time. But as of right now, it appears to me  
13 the government is aware of its obligation, that the information  
14 that is listed in there may include potential Brady material  
15 co-extensive with Jencks material. If so, Jencks time is a  
16 timely production of that. To the extent that -- I don't see  
17 anything in there that appears to me to be screaming out that  
18 it's Brady material and the government is just not turning it  
19 over in time.

20           MR. CASEY: Judge, may I?

21           THE COURT: Yeah.

22           MR. CASEY: I know that the Brady concept applies  
23 sometimes uniquely to each case. I just thought for the  
24 benefit of the government if the Court -- just to expound a  
25 little bit on basically the three individuals about whom I

1 think there's Brady material. Two are very similar, Mr.  
2 Klepadlo and Mr. Sheposh, operators of the Greenfield Township  
3 Sewer Authority. During all of the relevant times of this  
4 case, they were the operate -- at least Mr. Klepadlo was the  
5 operator from, I think, 1983 to 2000 -- the end of 2017. The  
6 search warrant was executed on 12/12/17.

7 All of the allegations that relate to my client are  
8 within that window. They start in 2013, and they go to 2017.  
9 The allegation -- the primary 23 counts against my client are  
10 focused on alleging that my client illegally operated the sewer  
11 facility in violation of the permit and that that's a crime and  
12 he did so knowingly.

13 All of the paper on this case, all of the evidence  
14 that I have seen from D. E. P. would call him the business  
15 manager and a laborer, not the operator, not the person making  
16 decisions on how the plant runs. So that's the context in  
17 which I would suggest to the government there may be Brady  
18 material and statements by Mr. Sheposh and Mr. Klepadlo.

19 And the expectation that I would have about their  
20 statements would be the following: Neither one of them would  
21 say that Bruce Evans, Sr. was the operator. Neither one of  
22 them would say Bruce Evans, Sr. operated the plant, which is a  
23 distinction the government appears to be making more recently  
24 that, okay, he's not the operator by paper but he must have  
25 participated in the operation.



1           Neither of them would say that Bruce Evans, Sr.  
2 understood or knew the limitations of the N. P. D. E. S.  
3 permit. I don't know what that means, but that's an acronym  
4 that relates to some federal regulation. Both of them,  
5 Klepadlo and Sheposh, have admitted to violating -- knowingly  
6 violating the permit with respect to the Greenfield Township  
7 Sewer Authority plant, and neither of them fault Evans in their  
8 violations of the plant.

9           Both of them, Klepadlo and Sheposh, have admitted to  
10 falsifying reports to conceal their violations of the permit  
11 with respect to the Greenfield plant. Neither of them would  
12 say Bruce Evans, Sr. knew that they were falsely reporting that  
13 the plant was operating within the permit when it was not.  
14 Both would say that Bruce Evans, Sr. would have had an  
15 expectation that they were properly testing and properly  
16 reporting the results of that test.

17           And finally, as to Klepadlo, it's my understanding  
18 that the F.B.I. when they executed a search warrant offered to  
19 provide leniency to him in exchange for him to doing a  
20 consensual telephone call with Bruce Evans, Sr., which never  
21 occurred, meaning he elected not to participate in it. Now,  
22 there's one other person the Court mentioned, Mr. Randt.  
23 Different category, different backdrop.

24           My client is charged in count seven with having  
25 received graywater. Mr. Randt ran a company called Northeast

1 Portables with Porta Johnny's out on the fracking pads. The  
2 waste from that went to other sewer plants including Greenfield  
3 Township. Bruce Evans, Sr. and Thomas Randt knew each other,  
4 and the government says that that friendship was reduced to a  
5 agreement or a contract for Northeast Portables to deposit or  
6 unload the graywater at the plant and then at one of the  
7 pumping stations and then at a second pumping station over the  
8 course of time.

9           As I understand it, this is one of the primary  
10 reasons this got as much focus as it did, as the government  
11 looked at Mr. Randt had received checks from his own company --  
12 or from the oil companies to his company and he didn't deposit  
13 all of this money. He kept significant amounts of cash to  
14 himself, and the -- logically enough the F.B.I. thought that  
15 maybe he was paying some kind of a kickback or a bribe to this  
16 municipality to take the graywater, and they suspected Bruce  
17 Evans, Sr. was one of those that agreed to receive something of  
18 value or cash from Mr. Randt over a period of time. And Mr.  
19 Randt deposited the graywater from 2011 as it's alleged in the  
20 indictment -- relying on the indictment's allegations to June  
21 of 2015, extended period of time.

22           The F.B.I. I surmise got Mr. Randt's bank records and  
23 then interviewed him more than once on this particular issue,  
24 and Mr. Randt in my view -- my understanding -- I have not  
25 spoken to him -- it's my understanding he exculpated Bruce

1 Evans, Sr. and said, he didn't take a nickel, it was done  
2 transparently, Northeast Portables wrote checks to the  
3 Greenfield Township Sewer Authority, those checks were  
4 deposited, they were processed through the board meeting and it  
5 was all cards up in terms of handling.

6 I would argue although that's -- my client in this  
7 superseding indictment is not charged with bribery or kickback,  
8 he's charged with intentionally violating the permit by not  
9 accurately reporting the graywater that Randt was depositing at  
10 the sewer authority and that he was making a false statement in  
11 a document in doing so. And I would argue to the Court and  
12 argue to the government that if one were to step into Bruce  
13 Evans Sr.'s moccasins for trial, that would be exculpatory,  
14 meaning that his behavior in handling that whole matter with  
15 which he's now charged as having participated in or lied about,  
16 there's a witness who is on the other end of that whole  
17 activity who would have said Bruce Evans, Sr. did not take  
18 anything of value from me to do this and he handled it in a  
19 transparent fashion.

20 So those are at least the reasons why I would ask the  
21 Court or -- and/or the government to consider providing to me  
22 Brady material those statements, and I would welcome the Court  
23 to look at them in camera. But I understand Your Honor's  
24 ruling and view of that, and we respect it. But I would be  
25 happy with that circumstance if the government were of the mind

1 or the Court were of the mind to consider this matter.

2 THE COURT: I think it's the government's obligation  
3 to produce, and they bear with that the risk of not producing  
4 information that, in fact, turns out to be Brady if it was.  
5 Let me go back for a second on that last the discussion you had  
6 concerning Mr. Klepadlo and Mr. --

7 MR. CASEY: Sheposh.

8 THE COURT: -- Sheposh. So the government hasn't  
9 charged your client with taking any bribes or anything of that  
10 nature, correct? I mean, the allegation against him is that  
11 the graywater that went in, whether it was paid for or not paid  
12 for, the bottom line was the formal filings with the state were  
13 falsified concerning that?

14 MR. CASEY: Yes, that's correct.

15 THE COURT: So assuming that Mr. Sheposh received  
16 money from fracking companies and that he paid some to the  
17 township but others unaccounted for, I'm not sure I am getting  
18 how that is Brady material as to your client.

19 MR. CASEY: Well, I don't mean to -- just to be  
20 clear, Sheposh and Klepadlo ran the plant. And in a simple  
21 version, I think their acknowledgment of having run the plant  
22 in violation of the federal law and then having falsely  
23 reported it is tantamount to three people being at the scene of  
24 a crime, two people saying, it wasn't this guy, it was me and  
25 this guy. I mean, it's pretty exculpatory in my judgment. The

1 second thing is Thomas Randt --

2 THE COURT: Isn't that what the jury is going to  
3 decide? Obviously, the government thinks differently. I  
4 assume they're going to be offering proof that would indicate,  
5 you know -- and this is not a good example -- but if John Gotti  
6 went to trial and he was the top of the organization, it very  
7 well may be that the people underneath him in the organization  
8 would say, he had nothing to do with it, it was just us. You  
9 know, circumstantial evidence might prove otherwise.

10 I don't know what the story is here. The mere fact  
11 that you believe that two of the individuals who have pled  
12 guilty are somehow -- you know, that they're not going to be  
13 implicating your client, the government may have a different  
14 perspective as to whether they will be, in fact, by either  
15 their actions or inactions or the circumstantial evidence  
16 around how things happened did implicate your client.

17 I don't know the answer to any of those things  
18 because I don't know the case as you all know the case, but --

19 MR. CASEY: By virtue of them not implicating them,  
20 they can exculpating them.

21 THE COURT: That's incorrect. That would be the same  
22 as anybody else who didn't implicate them being somehow  
23 exculpation. Implication and exculpation are not the same.  
24 And even if exculpation is, you know, disingenuous, again I  
25 don't know the circumstances -- but if there are statements

1 related to that, it sounds to me -- I could be wrong -- are we  
2 anticipating that they will end up being witnesses at trial?

3 MR. CASEY: I most certainly think they are going to  
4 be witnesses at trial.

5 THE COURT: Is the government expecting they will be  
6 witnesses at trial?

7 MS. OLSHEFSKI: Your Honor, only Klepadlo was charged  
8 and pled guilty. Sheposh was not charged. Klepadlo and the  
9 defendants are both involved with -- in civil lawsuits now.  
10 They are all blaming each other now against the sewer  
11 authority, and they're not charged with the same crimes.  
12 Klepadlo was charged for what he did and pled guilty. Both  
13 Evans, Sr. and Evans, Jr. are charged for their own crimes on  
14 separate dates.

15 MR. CASEY: I will take issue with that. They  
16 absolutely overlap.

17 THE COURT: I get that, Mr. Casey. That's kind of  
18 what, you know, trials end up being about people taking  
19 different perspectives. My concern here is not related to all  
20 the underlying facts, not who is guilty or not guilty or  
21 anything else, but whether or not there's true Brady/Giglio  
22 material that is not co-extensive with Jencks material that you  
23 will get and that would cause some unfair surprise that you  
24 would all of a sudden find out there's evidence indicating that  
25 your client was not guilty of the offense charged that you were

1 not aware of, and I am having a hard time presently figuring  
2 out -- while I understand you may be able to use some of the  
3 information that you have gotten by what you said to me  
4 favorably to you, and I am sure you will do a good job in that  
5 regard. I don't know there isn't a different perspective on  
6 that or whether it relates to the actual crimes that your  
7 client is charged with as opposed to crimes others are charged  
8 with or crimes that nobody is charged with and that somehow  
9 just have a bad feeling about them.

10 But I think at this stage, I'm -- I will first give  
11 Ms. Olshefski an opportunity to respond to you.

12 MR. CASEY: Just one follow-up. The Randt -- the  
13 third guy, Randt, there was actually no -- there were no bribes  
14 paid whatsoever, and the investigation came to Randt. They  
15 interviewed him a couple times on the suspicion that Bruce  
16 Evans, Sr. had taken bribes. I just want to make sure.

17 THE COURT: I'm sorry. I said Sheposh, but I meant  
18 Randt in terms of the taking the graywater in. Okay.

19 MS. OLSHEFSKI: So the interviews of Randt, Your  
20 Honor, involve -- they are multi-faceted. The fact that he was  
21 asked whether or not any cash exchanged hands is not  
22 exculpatory. He said, I know of nothing that he did wrong.  
23 They are not charged with taking bribes or charged with  
24 exchanging cash. And the fact that he said, I never paid him  
25 cash is -- he's obviously aware of it.

1           And also the focus on Klepadlo and Sheposh being the  
2 licensed operators of that plant during this period of time,  
3 they absolutely were, which is why one would be left to wonder  
4 why the Evans -- especially Mr. Evans, Sr. was caught in the  
5 act on multiple occasions operating the plant such that we have  
6 alleged environmental violations because he was operating the  
7 plant, and the statute is any person. It doesn't say any  
8 licensed person.

9           So if I were doing what Mr. -- the Evans are charged  
10 with doing, I would be charged with these crimes as well  
11 because of my conduct, not because I am licensed or not  
12 licensed. I will also say that what Klepadlo or Sheposh know  
13 -- what -- whether or not what Mr. Evans knows or doesn't know  
14 is -- how would they know that? I mean, that's what we are  
15 going to prove at trial. It's not an intentional violation.

16           It's a knowing violation, and knowledge can be  
17 inferred from the facts. And that's what we intend to show the  
18 jury. As I indicated, they're not charged with the same crimes  
19 that Mr. Klepadlo was charged with overall. I know that the  
20 defense at trial is going to be putting Klepadlo and Sheposh on  
21 trial to somehow alienate the evidence from the purview of the  
22 jury. That's going to be a battle I think will occur at trial,  
23 but they are not charged with the same crimes. The crimes  
24 occurred within the same time period but different acts.

25           And as I said, they're all blaming each other now.



1 There's a civil lawsuit going on. The sewer authority sued  
2 Klepadlo. Klepadlo sued both the Evans, and they countersued,  
3 and it's all going on now. Whether or not and who will testify  
4 at trial, I don't know yet. But I will certainly live up to my  
5 obligations. If there's Brady material, it will be turned  
6 over. Just because someone said, he didn't take money, he's  
7 not charged with taking money.

8           So there could be a lot of questions that are asked  
9 during the investigation, did he do this or do that, no. Well,  
10 he's not charged with that. So that's not Brady. And as I  
11 said, I will scan these records again. He has everything. He  
12 has more than is even relevant in this case in his effort to  
13 put Klepadlo on trial. And whether -- what Mr. Evans knew  
14 about the permit that was assigned to him, delivered to him and  
15 in which he enacted for the better part of two decades, that  
16 will be up for the jury to decide, Your Honor.

17           MR. CASEY: One further point. Mr. Klepadlo was paid  
18 \$3,000 a month for 20 years to maintain and operate the sewer  
19 authority, not Mr. Evans. That's why it's exculpatory. The  
20 fact that Klepadlo pled guilty to same statute, 1319 of Title  
21 33 and he pled guilty to illegally operating and issuing false  
22 statements as a consequence, very exculpatory to a man who is  
23 not the operator, was a laborer and the -- it's the exact same  
24 period of time they are trying to hold my guy responsible for  
25 operating the same plant illegally. That's my last --

1           THE COURT: Well, in looking through the requests, I  
2 am going to generally deny your request, Mr. Casey. To the  
3 extent that -- as I read through all of these that to me it's  
4 not articulable they are, in fact, undoubtedly Brady and Giglio  
5 material at this time. I am satisfied that the government  
6 counsel is aware of her obligation under Brady and Giglio and  
7 that she will supply you with any information that fits within  
8 that either after -- as she said, she will review her  
9 documentation again -- or to the extent that any of it is  
10 information that is co-extensive with Jencks material, you will  
11 get that at Jencks time.

12           In particular looking at your original motion, you  
13 requested all audio recorded conversations between Joseph  
14 Sheposh and Daniel Klepadlo. Again, don't take this wrong, in  
15 request for Brady and Giglio material, all recordings doesn't  
16 exactly tell us anything other than they had a conversation or  
17 may have had a conversation, but that's not what Brady or  
18 Giglio are about. They're about exculpatory information in  
19 there.

20           I assume that if that -- if there is such an audio  
21 recording and it's going to be used at trial at some point it  
22 will be turned over to you if it's going to be an exhibit used  
23 at trial. All understandings, agreements or grants of  
24 favoritism or leniency to Joseph Sheposh by the government,  
25 that's kind of classic Jencks material that gets turned over at

1 the time that, you know, usually plea agreements when there's a  
2 cooperating witness or things of that nature. So that appears  
3 to be extensive again with Jencks material assuming that Mr.  
4 Sheposh would be a government witness.

5 All offers of leniency or favoritism by the Scranton  
6 F.B.I. to David Klepadlo in exchange for his cooperation  
7 against Bruce Evans, Sr. on March 18th, 2016, again to the  
8 extent that there were such offers, they again strike me as  
9 being kind of your classic Jencks material that is -- would be  
10 turned over to you. All notes of all agents executing search  
11 warrants on David Klepadlo's home and office on March 18th, I  
12 don't know the particular relevance of March 18th, 2016 to the  
13 charges in the indictment, but assuming that -- that they are,  
14 in fact, relevant I would assume that to the extent that  
15 there's any Jencks material there either by the agents or that  
16 it's a Court record that's required to be turned over, the  
17 government will, in fact, do that. All interviews of Thomas  
18 Randt by the Scranton F.B.I. and federal agents regarding the  
19 G. T. S. A., Greenfield Township Sewer Authority, and Bruce  
20 Evans, Sr., again citing Brady versus Maryland, again, the idea  
21 of all interviews makes it sound like I want to get everything  
22 that he said when, in fact, Brady is not everything. It's not  
23 Jencks. They're not the same thing. I know you know that.

24 I also know that you need to ask for as much as you  
25 can get and hope you get something, but it appears to me that

1 kind of fishing expedition boilerplate large bald statements  
2 made by him don't necessarily fit into the question of Brady.

3           But to the extent there is Brady or Giglio in there,  
4 again, it sounds to me like information that would be  
5 appropriately produced at Jencks time. Criminal records of  
6 Joseph Sheposh and any other government witness in the case, I  
7 would assume the government will also turn over if there are  
8 criminal records they're aware of any of their witnesses that  
9 they will turn those over to you. Statements and summaries of  
10 statements taken by the F.B.I. and other federal investigators  
11 that were told by witnesses any of the following -- and you  
12 list a number of things that Mr. Evans is an honest person -- I  
13 assume that Mr. Evans did not accept things of value in order  
14 to accept waste or discharge at the G. T. S. A., Bruce Evans,  
15 Sr. did not know Joseph Sheposh was falsifying taking samples  
16 and thereby obtaining false laboratory relates, Bruce Evans,  
17 Sr. was a manager and not an operator of the G. T. S. A., Bruce  
18 Evans did not engage in any criminal activity, members of the  
19 G. T. S. A. authorized purchases of federal government claims  
20 were unauthorized, Bruce Evans, Sr. was not involved in the  
21 operation of the G. T. S. A -- it appears to me a lot of that  
22 kind of -- some of it is certainly the crux of what the case is  
23 about.

24           You know, I don't know that an operator is a term of  
25 art. I understand you're using it more precisely as a term of

1 art. The government is using it more broadly as somebody who  
2 was involved in running the place. We will wait to see how the  
3 evidence produces it. I don't know that Ms. Olshefski properly  
4 says the statute doesn't refer to a licensed operator or some  
5 -- what I'll call definitional response. It could be a lot of  
6 people are running and doing things in that place that would  
7 qualify on any given day as operating on that day.

8 I don't know what the answer is, but the jury will  
9 ultimately decide once they heard the evidence whether or not  
10 Mr. Evans, Sr. or Jr. fits into the category of operator. I  
11 know you will make a very cogent argument as to why that's not  
12 the case, and Ms. Olshefski will make a cogent argument as to  
13 why that is the case. Inconsistent statements of Joseph  
14 Sheposh, members of the G. T. S. A. or other government  
15 witnesses again, in that case, you know, as I said earlier, the  
16 jury always gets advised that once they heard all of the  
17 testimony that you often can draw a different inference from  
18 testimony, and one side will ask you to draw one inference and  
19 the other will ask you to draw the other inference.

20 I don't know the government is in a position to  
21 decide what you think would be inconsistent for purposes of --  
22 you may see something as inconsistent that they don't see as  
23 inconsistent with that but -- finally, any evidence that any of  
24 the government witnesses are drug abusers, you can certainly --  
25 I mean, if the government is aware that they were drug abusers

1 at the time of the incidents in question, to the extent that it  
2 would appear to be either relevant to the findings, I guess at  
3 some point they should tell you that. Aside from that, you  
4 know, you're free to ask on -- if you have a good faith basis  
5 on cross examination of any witness if you believe that to be  
6 the case and had a good faith basis -- the question -- and I  
7 certainly know you long enough you don't ask questions without  
8 a good faith basis -- that you can ask that question of those  
9 witnesses.

10           If the government is aware there's some drug problem  
11 somebody has in or around the time of this particular activity  
12 that would affect their ability to cogently remember what  
13 occurred or whatever, then I would assume they would advise you  
14 of that. But aside from that, as I said, it just doesn't  
15 appear to me that the government is unaware of its obligation  
16 under Brady. I know we can parse what Brady is, and again each  
17 side has a different perspective on what Brady is.

18           I tend to see in this case that to the extent any  
19 material is, in fact, Brady it appears to me this was generally  
20 co-extensive with Jencks and that you would get those  
21 statements that you will argue later will be inconsistent with  
22 some other statements, and I am sure you're going to find a ton  
23 of things that you in your cross examination believe to be  
24 perhaps inconsistent with what somebody else said or recorded  
25 at an earlier time or especially when they take multiple

1 statements. Normally there's always some inconsistencies  
2 between those statements. That's something you will be able to  
3 argue in time. It's also clear to me that you got a pretty  
4 factual basis and have a lot of information concerning the  
5 parties in this particular case.

6           The concern in my mind with Brady is not only it be  
7 turned over in enough time to make sure that the defense is not  
8 prejudiced by the result of not having the opportunity to  
9 investigate that material, and it doesn't appear that's the  
10 case here. Based upon all of those, I am going to deny the  
11 request or motion for Brady material to the extent the  
12 particular requests are made, but I am going to direct the  
13 government to comply with their obligations in supplying the  
14 defense with any Brady or Giglio material that they are aware  
15 of as soon as they become aware of that to the extent that the  
16 information is co-extensive with Jencks material and there's  
17 presiding case law they can supply that at Jencks time and that  
18 is considered timely, all right.

19           So that appears to me to cover all of the matters  
20 that we have outstanding in terms of motion practice. Is there  
21 something else?

22           MR. CASEY: Just one follow-up, Judge. On the  
23 subpoena --

24           THE COURT: Oh, yeah, the subpoena. The parties  
25 agreed and stipulated to that?

1 MR. CASEY: We're modifying the dates from 2015 so --

2 THE COURT: I appreciate both you agreed to that. So  
3 do you have the subpoena?

4 MR. CASEY: I don't have it physically with me.

5 THE COURT: Why don't you just amend the date? Make  
6 sure you supply a copy to the government. You can serve  
7 Pennsylvania D. E. P. Was that who it was?

8 MR. CASEY: Yes, down in Wilkes-Barre.

9 THE COURT: Okay. That's agreed to by the parties.  
10 I appreciate your agreement.

11 MR. CASEY: I don't know what the Court's preference  
12 is, but I had a couple things that were not brought up. It  
13 would be helpful if the defense could have an inspection of the  
14 Greenfield Township Sewer Authority and take some pictures the  
15 interior and exterior. I know Harry Coleman is counsel to the  
16 board. So it would be appropriate probably for Ms. Olshefski  
17 and I to just vet with him a time and date --

18 THE COURT: I certainly have no problem with that.  
19 You can take, you know, pictures of -- it's a public owned  
20 entity. I imagine if you have permission from them, you don't  
21 need permission from anybody else. I don't have a problem with  
22 that. I do appreciate you making sure that counsel on the  
23 other side is notified so both parties have an opportunity to  
24 be there at the same time if they need to so if there's any  
25 questions later about authenticity or any questions about, you



1 know, both sides having equal opportunity that you both do  
2 that. What else?

3 MR. CASEY: I also would like to compose and  
4 circulate to counsel first and then to the Court additional  
5 questions for the jury, questionnaire. I have not -- I  
6 composed something, but I didn't get it out in time to get it  
7 to Ms. Olshefski. So I will get it to her tomorrow. But I  
8 just want to --

9 THE COURT: My general practice is as you probably  
10 know and that is, that I allow counsel to be actively involved  
11 in the jury selection. So I will ask those kind of standard  
12 questions that we ask the jurors, and then I will allow counsel  
13 to ask questions. I normally advise counsel please don't try  
14 your case in jury selection, fair and reasonable questions  
15 concerning the ability of the jurors to be fair and impartial  
16 in the case, understanding that, of, course that they need to  
17 have some sense of what the case is about, and they will  
18 certainly have that. Perhaps the best practice would be  
19 prepare your questions, share them with Ms. Olshefski, and  
20 hopefully both sides can work out that they are agreeable to  
21 the verbiage or wording on the questions so there isn't any  
22 kind of surprise or nobody has to stand up in front of the jury  
23 and object to the other side's questions. So you can have an  
24 opportunity to see those in advance, all right.

25 MR. CASEY: And in the past at times the Court has

1 approved the mailing of the additional questionnaire to the  
2 jurors so they have time privately to fill it out so --

3 THE COURT: I generally don't do that. First of all,  
4 we're never a hundred percent of which jurors will show up. I  
5 also don't generally want to have the jurors doing any research  
6 on a case that they may be involved in by, you know, somehow  
7 figuring, like, well, okay, I want to find out what this case  
8 is about. I try to spend a good period of time making sure the  
9 jurors do no research of any kind so all they learn about the  
10 case is within the four corners of the courtroom.

11 So while I will certainly entertain it, you can talk  
12 about it with each other, it's honestly unlikely that I will do  
13 that because, as I said, my concern is I don't want people I  
14 don't -- have not met yet haven't heard one item from me who  
15 now decide it and will take it upon themselves if they can read  
16 or learn or search the internet about people, names and places  
17 and things of that nature. But so that's -- I won't say it's  
18 denied, but I am saying it's highly unlikely that I am going to  
19 agree to that.

20 But I certainly have no problem with the two of you  
21 working out, you know -- sharing with each other the questions  
22 that each side thinks they will ask so that if there's any  
23 disagreements as to verbiage we can handle that beforehand and  
24 not have to have hopefully any objections during the  
25 questioning itself that would make either counsel look like

1 they're either trying to hide something or they're upset about  
2 something.

3 MR. CASEY: There was one other item, but I think it  
4 will raise it with Mrs. Olshefski later. It's just a discovery  
5 thing.

6 THE COURT: All right. So based upon that --

7 MR. BROWN: I have one more, and I just wanted to let  
8 you know I gave Ms. Olshefski a binder of my client's medical  
9 records. And the reason why I did that is after being charged  
10 on December 8th, 2019 he had a car accident and he has been --  
11 has a traumatic brain injury for which he goes to the hospital  
12 a lot. When I meet with Mr. Evans, Jr., I can only meet with  
13 him for about an hour, an hour and a half. So I don't know as  
14 far as how to handle that with the jury if he were to need to  
15 maybe mis portions of it because of the fact that, you know,  
16 it's affecting his brain or if he would need multiple breaks in  
17 the periods of time, I just wanted to raise it at this point  
18 just to let you know.

19 I can only really meet with him for about an hour at  
20 a time. So I just wanted -- as far as whether he needs to be  
21 in the courtroom the whole time, he will be here during the  
22 most important parts, the parts which are obviously jury voir  
23 dire, and I will try to keep him here as often as possible, but  
24 I wanted you to be aware of that.

25 THE COURT: All right. Well, I think the best we can

1 do on that is cross that bridge as we come to it. Obviously if  
2 somebody has a medical reason for not being able to be here, we  
3 can give some neutral explanation to the jury that it's  
4 appropriate for him for some reason that's unrelated to their  
5 determination in the case that he is not present at certain  
6 times and then go on from there. We will figure out a way to  
7 work around that.

8 MR. BROWN: Okay.

9 THE COURT: In terms of, you know, kind of our  
10 procedural particulars, as I said, we're going to move the  
11 trial date from October 18th, 2021 to November 15th of 2021 at  
12 the request of counsel in the case. I am going to ask that the  
13 parties submit their requested points for charge by November  
14 1st.

15 Now, with respect to the points for charge, you know,  
16 the first half of the charge is normally those standard  
17 instructions that occur in every criminal case. You can  
18 probably pull from the public records and dockets what I  
19 charged before in criminal cases. This is different because of  
20 the charge that's here. But the first half of the charge is  
21 normally that standard instruction that goes in every case,  
22 credibility, burden of proof, number of witnesses , you know,  
23 all of those matters that are appropriate.

24 The reason I mention that is that, you know, I am  
25 probably going to give my standard charge in that regard. If

1 there's something particular or different you feel needs to be  
2 given -- but for the most part it strikes me you probably don't  
3 need to be submitting charges on most of that unless there's  
4 something unusual that you want to charge. What I am always  
5 interested in is the substantive charge in the case, and so  
6 counsel should submit hopefully a joint proposed charge as to  
7 the substance.

8 I want to talk a little bit about charges. I  
9 normally use the standard Third Circuit jury instructions. I  
10 don't know if there is a standard Third Circuit jury  
11 instruction on these particular charges. If there is, that's  
12 what we will be using. If there isn't, then we should look to  
13 other circuits for their standard jury instruction on these  
14 charges.

15 The reason I say that is that standard jury  
16 instructions for the most part are tried and true, and so I  
17 like to stay with them. I virtually never charge snippets from  
18 cases. And the reason I don't do that is with all due respect  
19 to many of my colleagues around the country, you can find a  
20 snippet that almost says anything. They carry very little  
21 weight with me, snippets from cases. And so what I really am  
22 looking for are tried and true instructions that have been  
23 given and hopefully affirmed before.

24 That's why I would ask that the parties with respect  
25 to the elements of the offenses charged that you exchange with

1 each other your ideas of what that charge should be. Now, it's  
2 important to note that although I am asking you to submit a  
3 request to charge by November 1st, this in no way forecloses  
4 you in any way from requesting that we add or delete other  
5 charges as the trial goes on.

6 I say that because before we finish the trial, I will  
7 hold a charge conference, and we will then decide are there  
8 additional charges we need to add based on what's been -- what  
9 the proof has shown or anything we need to take out because  
10 it's not no longer in the case. The idea behind November 1st  
11 is it gives us an opportunity to print and get prepared on the  
12 charge as opposed to the day before trying to do an entire  
13 charge.

14 So while it's important that you give me everything  
15 that you think you are going to reasonably need in that charge  
16 by November 1st, you are not foreclosed in any way as a result  
17 of that if there's something additional we need to add or take  
18 out in there. Again, I appreciate counsel submitting to each  
19 other their charges so I am not just reading two charges  
20 submitted by each side that are basically the same. So run  
21 your language by each other. See if you can work out any  
22 differences that are related there.

23 You do need to agree upon a verdict slip. The  
24 parties need to agree upon a verdict slip in the case. So you  
25 need to get together and ultimately submit a joint proposed

1 verdict slip in the case. That would be by November 1st as  
2 well. Again, that's without prejudice to any changes we need  
3 to make depending on what happens once the trial is actually  
4 completed and presented.

5           If you intend to use the JERS system, you know, the  
6 electronic presentation of evidence, by November 11th, you need  
7 to submit to us a disc in P. D. F. format that includes your  
8 exhibits. Again, that does not prejudice you from adding or  
9 deleting other exhibits as the evidence requires in the case.  
10 It just gives us an opportunity to upload what's there so we  
11 can smooth and upload and bring up what needs to be brought up  
12 and marked and admitted when it's admitted so it can go back to  
13 the jury using the JERS system later on.

14           I anticipate you will stipulating to a lot, in other  
15 words, the authenticity of records and I -- I would certainly  
16 hope --

17           MS. OLSHEFSKI: Your Honor, I've been advised by  
18 counsel that there will be no stipulations to anything.

19           MR. CASEY: We're not stipulating to lab reports. If  
20 they want to bring in expert opinion on what the contamination  
21 was, they can call those witnesses. I am not ruling out  
22 entirely stipulations. But in that area I would not entertain  
23 a stipulation.

24           THE COURT: Well, I guess what I would like to do is  
25 make sure that stipulations as to authenticity -- I assume

1 there's a lot of records in this case, they were, in fact,  
2 records of the Greenfield Township Sewer Authority. There  
3 should be no reason why most of those cannot be stipulated to  
4 and agreed by the parties. If there's some concern about, for  
5 example, a lab report, you want to cross-examine the person  
6 there because you're challenging their findings on the lab  
7 report, you're entitled to do that. I don't have a problem  
8 with that.

9           What I am more concerned with is that we're not going  
10 to waste time bringing in, you know, some secretary in  
11 Greenfield Township to say this document that nobody is truly  
12 arguing is not from Greenfield Township on that date is not  
13 what it purports to be, not that's it's admissible, not what it  
14 purports to be. It's authenticity. I don't want to waste time  
15 with authenticity.

16           There may be other things in the course of the case  
17 you can agree to and stipulate to that no party has a good  
18 faith basis to challenge. Those things you have a good faith  
19 basis to challenge them, challenge them. You have a right to  
20 do that. That's not a problem.

21           MR. CASEY: Just on the point, as the Court  
22 perceives, there are a lot of records, and I think authenticity  
23 that's an issue we can get past and bank records and Greenfield  
24 Township, American Express card receipt they're going to put in  
25 -- but an additional thing I will raise and not asking for



1 comment so the Court knows and the government knows, there  
2 might be a D. E. P. report and there could be a half a dozen  
3 people spoken about or speaking within that document, could be  
4 boot strapping a bunch of hearsay in -- I just want to be  
5 sensitive to that and to the -- the expert opinions and lab  
6 reports just so everybody knows what my concern would be.

7 THE COURT: Yeah, and that's completely okay. You  
8 know, I know that in medical malpractice cases, you know,  
9 medical records sometimes go in and sometimes don't go in their  
10 entirety because there's, like, 25 people that have said  
11 something that's not there. Some of it is relatively  
12 unimportant and unchallengeable, and that's not usually a  
13 concern.

14 I understand if there's any information that's  
15 concerning, then, you know, it's the obligation of whoever is  
16 going to present the evidence to make sure that what's in there  
17 is supported by the testimony if necessary of live people  
18 because you can't cross-examine the document. My concern  
19 really is more with I don't want to waste time on stuff nobody  
20 is disagreeing is authentic or nobody is disagreeing, you know,  
21 should go in and, you know, that everybody understands it is  
22 those I'm more concerned with, things that have -- there's a  
23 good faith basis to challenge their admissibility and/or  
24 authenticity. That's okay. You're entitled to do that. I  
25 don't have a problem with that.

1           It seems to me there's a lot of stuff you can work  
2 out that will not have us dragging the case on for no  
3 particular good reason when nobody is truly in good faith  
4 alleging that it's not what it purports to be or something of  
5 that nature. That's not the same whether it's admissible.  
6 It's just as to its authenticity. The two of you will  
7 hopefully work those things out, or the three of you will work  
8 those things out.

9           We will again the trial on the 15th at 9:30 in the  
10 morning here. My guess is we're going to be under COVID  
11 protocols unfortunately. So the result of that is that it will  
12 be a little -- won't be as smooth as we like it to be and more  
13 disjointed. We will do our best. You can see the courtroom  
14 has its Plexiglass everywhere. If we are, and I would expect  
15 and anticipate fully, that we will be still using the COVID  
16 protocols. Counsel will be required to ask questions from  
17 either their counsel chair or from the podium.

18           I apologize for that because it's not the way I would  
19 want someone to have to try a case. But we can't let people  
20 walk around the courtroom. And the reason I say that is that  
21 there are 16 seats in the jury box. We put four people in the  
22 back so there's a seat separating each of them. There's four  
23 that sit in the row before them so there's a seat between each  
24 one of them. You can see four chairs in front of the jury box,  
25 so four individuals will be there. This way everyone can be

1 safely socially distanced and at the same time have good  
2 observations of what is going on. In light of the fact they  
3 are sitting in front of the jury box it precludes the ability  
4 to let counsel just kind of walk around to normally to ask  
5 questions. Everybody will be given their little plastic baggie  
6 as many as you need.

7           When you go up to the podium if that's where you wish  
8 to do your questioning from, you take your baggie with you, put  
9 it over the microphone. When you're done, you take your baggie  
10 back with you so other counsel could put their baggie over. In  
11 between each witness we will sanitize both the lectern and the  
12 witness area so when the next witness comes on we will be safe  
13 as well.

14           When we do our jury selection, normally we would pack  
15 everybody into the courtroom and do our selection. We will  
16 probably do it in two jury selections both the same day right  
17 after another. We will divide the number of jurors into two  
18 bringing half of them into the courtroom at one point in time  
19 so that we can safely have them socially distanced. We will go  
20 through the entire questioning process with group one, and we  
21 will also do outside of the hearing of the jury any challenges  
22 for cause with group one and excuse group one and do group two  
23 and repeat the same process.

24           We will do any challenges for cause with group two.  
25 Then we will have them back into one of the courtrooms where

1 they will be sitting. Once we have done that then what we will  
2 do is we will come back in and then we'll probably then need 34  
3 jurors. So when we divide them to bring them in, let's say  
4 there is 50 jurors just as an example. 25 will come in group  
5 one numbers one through 25. We will do their questioning and  
6 do their challenges for cause. They will go back to a  
7 courtroom and sit.

8 We will in bring group two, 26 through 50, do all the  
9 questioning, do our challenges for cause. We will send them  
10 back. After we finish that, they are all back there. And  
11 let's suppose there are 40 jurors left and ten were challenged  
12 for cause for whatever reason and they are excused and there's  
13 40 left as an example. The defense will have 11 peremptory  
14 challenges in the case. The government will have seven. It's  
15 normally six and ten. We're going to pick two alternate  
16 jurors. What do you expect the length of the case to be?

17 MS. OLSHEFSKI: Ten days to two weeks.

18 THE COURT: Mr. Casey, your estimate of the trial,  
19 your time?

20 MR. CASEY: If we put a defense on, Judge, I guess I  
21 anticipate a couple days at the back end of the government's  
22 case.

23 THE COURT: Mr. Brown?

24 MR. BROWN: A couple days, Your Honor, maybe one or  
25 two.

1           THE COURT: Figure the case will be two weeks or  
2 whatever, maybe a little bit beyond that. So based on that, we  
3 may pick -- instead of two alternates, get four alternates just  
4 to make sure. If we do that, under the rules theoretically the  
5 defense has ten peremptory challenges, the government has six.  
6 You get one peremptory challenge for each two alternate jurors  
7 that are to be selected, so that's why we normally we pick two.  
8 I said the defense would get 11, the government would be seven.

9           Although the rule indicates that they should be  
10 separate, I allow counsel to use their peremptory challenges  
11 wherever they want to use their peremptory challenges. If we  
12 pick four alternates, then each one would get an extra  
13 peremptory challenge. The defense would have 12 altogether,  
14 and the government would have eight altogether. The reason I  
15 use those numbers as an example would be if we were going to,  
16 for example, pick 12 jurors and two alternate jurors, that  
17 would be 14 jurors that would be selected.

18           If the defense in that circumstance had 11 peremptory  
19 challenges and the government had seven peremptory challenges  
20 total, that will be a total of 18 peremptory challenges. So if  
21 we take the 14 that will be selected and add to the 18, it  
22 means we can't get past juror No. 32 or the first 32 jurors.  
23 Normally instead of bringing all 40 back, I bring back maybe 34  
24 just so we are safe in case someone got sick when they were  
25 here, and we'd ultimately do your peremptory challenges because

1 we have already the done the challenges for cause. If those 34  
2 people in the first -- after you were done, the first 12 that  
3 were left would be the regular jurors, and the next two, as the  
4 example I use, would be the alternate jurors. If we end up  
5 four, then we extend that a little bit. That's probably where  
6 we will go just so you have some logistical idea what we are  
7 going to do.

8           The government opens first. Once we finish the jury  
9 selection process, we will go directly into trial. What I mean  
10 by that, of course, if it's lunchtime, we will break or if it's  
11 not lunchtime, we will certainly break to give counsel time to  
12 get their acts together so to speak. We will go directly into  
13 trial in the case so the government should be prepared to have  
14 witnesses even on that first day.

15           We do opening statements by the government and  
16 opening statements by the defense, and the government would  
17 begin to call its witnesses in the case until it has finished  
18 its case. The indictment reads Bruce Evans, Sr. and Bruce  
19 Evans, Jr. That means Bruce Evans, Sr., Mr. Casey will go  
20 first in terms of cross examination, and then Mr. Brown will be  
21 going second and follow the order that's in the indictment.

22           Similarly, once the government has completed their  
23 case, if you do have witnesses or a case to present, same for  
24 Mr. Casey, your client will go first, and, Mr. Brown, your  
25 client and whatever presentations you wish to make will go

1 next. The government has the option for rebuttal. When we  
2 know the case is coming to a close, I will certainly ask the  
3 government as they are getting to the end of their case to make  
4 sure you are aware of that, the defense, so you can be prepared  
5 with your witnesses. Similarly, as you get through your case  
6 and completing at any given date, make sure the government is  
7 aware of that so if the government has rebuttal that they are  
8 prepared and we don't lose any half days because we finish at  
9 11:00.

10           We go every day from 9:30 until 5. We try to break  
11 at a time that is logical. So if we are finishing a witness at  
12 4:50, unless there's a very, very short witness, we will not  
13 start another witness. If we need to go to 5:20 to finish the  
14 direct and cross of a witness, we will do that so we can kind  
15 of try to make as best we can continuity. I don't like to  
16 break in the middle of anywhere. A former colleague of mine at  
17 4:00 used to break because he ran at Lake Scranton. And you  
18 can be in the middle of a sentence, and he was breaking at that  
19 period of time. That was the end of it.

20           At the conclusion of the rebuttal the government  
21 would have, then I will charge the jury first. Then counsel  
22 will close after I charged the jury, and that's part of the  
23 reason we ask you to give us those requested points for charge  
24 early because we will prepare a written charge in the case of  
25 which counsel will have, and you're free to refer to that

1 charge in the course of your closings as you see appropriate  
2 because I will have charged the jury. The jury will also  
3 receive a written copy of the charge but not until they go back  
4 to deliberate.

5           So I want them to listen as I tell them what the law  
6 is. You'll have a copy of the charge, and you can use that in  
7 your closings as you see fit. When they leave to deliberate,  
8 we will give them a written copy of the charge so if they have  
9 questions about the law they can certainly look to that copy of  
10 the charge to see if that -- whatever their question may be.

11           After I charged, the government will do its closing  
12 followed by Mr. Casey, followed by Mr. Brown, followed by  
13 rebuttal by the government. Then after that, I will give the  
14 jury what I call housekeeping instructions on how they should  
15 perform their jury deliberations. Whenever the jury gets the  
16 case -- we will go from 9:30 to 5 basically every day. We will  
17 break for an hour and ten minutes at lunch so the jury has time  
18 to get where they want to eat and get back and have 45 minutes  
19 to enjoy their lunch.

20           On the day the jury gets it, once they get the case,  
21 we're completely at their discretion. So if at 5:00 they say,  
22 we're tired and want to go home, we will break for the day and  
23 come back the next day. If they want to stay until 2:00 in the  
24 morning, we will stay until 2:00 in the morning. So once they  
25 get the case, we're on their schedule, not on our schedule. So



1 we should prepare that accordingly. If you need to approach a  
2 witness for purposes of showing them something that's physical,  
3 it's not going to be just on the electronic screen or whatever,  
4 I'm fine with that. We just need to kind of be careful in  
5 terms of our protocol on, again, keeping socially distanced  
6 from the jurors and even from the witness in the box.

7           We will be wearing masks because I normally -- with  
8 the jury trial we are supposed to start yesterday -- and to my  
9 shock the last trial I had, I asked the jurors beforehand how  
10 many were vaccinated, and probably 75 or 80 percent were  
11 vaccinated, and yesterday's of 40 some jurors almost half were  
12 not vaccinated. I was shocked by that.

13           But be that as it may, we don't know what the mix  
14 will be, and so we'll be wearing masks. When you ask  
15 questions, you can certainly take your mask off at the podium  
16 or at counsel table. Is everybody here vaccinated? Yeah. In  
17 that regard, I don't know whether Mr. and Mr. Evans or  
18 vaccinated or not. But to the extent that at counsel table  
19 when you're questioning that you wish to take off your mask --  
20 other than that, you're going to have to wear it. I will be  
21 wearing mine even though I am socially distanced from everybody  
22 because I feel like it's important for the jury to feel we're  
23 all in the same boat so to speak in terms their not being  
24 punished somehow.

25           And so we will all be wearing those for safety

1 purposes. If counsel needs it, we will take a break in the  
2 morning and break in the afternoon. If you need a break, let  
3 me know and we will take a break. I would ask you to keep any  
4 sidebar conferences to an absolute minimum. I am okay with  
5 speaking objections. Make your objection, and I'll rule on it.

6 This isn't law school. It's the real world. So we  
7 will try to keep our case moving as best we can. I think  
8 that's all that I can think of off the top of my head. Usually  
9 John turns around and tells me, you forgot to ask this. But  
10 then that being said, so, Mr. Casey --

11 MR. CASEY: Judge, do you have a rule as to whether  
12 evidence goes out to the jury or --

13 THE COURT: Yes. Evidence goes out to the jury. The  
14 jury -- anything that's admitted into evidence the jury is  
15 entitled to see, and so it all goes out to the jury. I  
16 remember that same judge on one case the jury went out and the  
17 evidence was all sitting there. I'm, like, are we going to  
18 send the evidence back, and his answer was, not unless they ask  
19 for it. So then every trial I had with him afterwards the  
20 first thing I told the jury, the first thing you should do is  
21 go back there and ask for every piece of evidence that's been  
22 admitted. That used to tee him off actually.

23 That's the evidence in the case. So they are  
24 entitled to have it all, and they can look or not look or  
25 whatever it is they want to look at or not look at. It's all

1 going back. With respect to the evidence, I will -- I do ask  
2 you when you refer to evidence you refer to it by a number so  
3 the record is clear and that, secondly, that right before we're  
4 ready to finish I'll have counsel go through each other's  
5 exhibits to make sure everybody is in agreement what has been  
6 admitted into evidence so there's no misunderstanding what's in  
7 or not in, what the jury is going to get, all right. What  
8 else? Anything else from you, Mr. Casey?

9 MR. CASEY: No, Your Honor. Thank you.

10 THE COURT: Mr. Brown?

11 MR. BROWN: No, Your Honor. Thank you.

12 THE COURT: Ms. Olshefski?

13 MS. OLSHEFSKI: No, Your Honor. Thank you.

14 THE COURT: Thank you.

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## REPORTER'S CERTIFICATE

I, Laura Boyanowski, RMR, CRR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

s/ Laura Boyanowski, RMR, CRR  
Laura Boyanowski, RMR, CRR  
Official Court Reporter

## REPORTED BY:

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